STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

THE PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois,	)	
Complaint to suspend tariff changes submitted by Ameren Illinois and to investigate Ameren Illinois Rate MAPP pursuant to Sections 9-201, 9-250, and 16-108.5 of the Public Utilities Act;	)	Docket No. 13-0501
AMEREN ILLINOIS COMPANY d/b/a Ameren Illinois,	)	
Revision to its Formula Rate Structure and Protocols.	)	Docket No. 13-0517 (cons.)

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1. Return on Equity Collar Calculation

The AG, seconded by CUB, argues that the Commission should revise AIC's return-on-equity (ROE) collar computation to incorporate average, rather than year-end, rate base. (AG Init. Br. 17; *see also* CUB Init. Br. 5-9.) Staff, in contrast, does not support the AG's proposal but states that "Staff's calculation of the ROE collar . . . utilizes a year-end rate base." (Staff Init. Br. 9.) The AG's proposal conflicts with statutory requirements and must be rejected.[1]

The AG ignores the statutory language that requires the use of year-end rate base in determining the ROE collar.

The heart of the AG's argument is that the Energy Infrastructure Modernization Act (EIMA or Act) says nothing regarding the determination of rate base for purposes of the ROE collar: "While P.A. 98-0015 specified the use of year-end rate base for some aspects of the

[1] CUB does not offer any points in addition to those made in the AG's brief. All of AIC's responses to the AG apply equally to CUB, even if not stated expressly.

formula rate, it did not address the ROE collar other than by reference to year-end capital structure." (AG Init. Br. 13.) Contrary to the AG's assertions, the EIMA speaks to this issue and prohibits the use of average rate base.

The ROE-collar provision specifically requires that earned ROE be "calculated" using AIC's "actual year-end capital structure" *and* "consistent with" the overarching requirements of Section 16-108.5. 220 ILCS 5/16-108.5(c)(5) & (2). The first requirement, "actual year-end capital structure," can only mean *year-end rate base* times *year-end equity ratio*. Change the dating of either factor, and you get something different than the "year-end" value that the statute requires. Likewise, the "consistent with" language confirms that the ROE collar calculation must be carried out according to the standards set forth elsewhere in the EIMA, and these standards also require year-end rate base. Section 16-108.5 requires the use of "final historical data" and "year-end rate base" in reconciliation-year computations, *e.g.*, 220 ILCS 5/16-108.5(d)(1), and nowhere does it even arguably command the use of average rate base. The AG offers no way around these statutory requirements.

Year-end capital structure entails year-end rate base.

Consider first the AG's treatment of the requirement to use "actual year-end capital structure." 220 ILCS 5/16-108.5(c)(2). According to the AG, this "simply means that the year-end common equity ratio will be applied to the appropriately calculated rate base investment." (AG Init. Br. 16.)

This is not interpretation but revision. The AG divides a unitary statutory concept ("year-end capital structure") into two, differently calculated components (*year-end* equity ratio; *average* rate base). But the law provides no basis for this. The legislature obviously did not say "year-end common equity ratio" but "year-end capital structure." And it gave no warrant to calculate the components of capital structure *differently*; there is only one modifier, and that is "year-end." Thus, neither of the concepts essential to the AG's recommendation (that rate base and the equity ratio should be treated differently, and that only one treatment should use average data) is even hinted at by subsection (c)(2).

Even the intervenors' briefs cannot avoid confirming that capital structure and financing ratios are not the same thing. For example, the AG describes what the Commission must determine to calculate ROE: "[*1*] net income, [*2*] applicable rate base, and [*3*] common equity ratio *based on* its year-end capital structure." (AG Init. Br. 12 (emphasis added).) The description of the third factor proves AIC's point: although a common equity ratio may be *derived from* the year-end capital structure, they are not identical.[2]

Likewise, CUB states that "the capital structure [is] used to develop the capital ratios used in calculating the rate of return." (CUB Init. Br. 8.) Again, even CUB—with every incentive to equate the two—cannot help but to distinguish between capital structure and capital ratios. Even more problematically, it recognizes that the ratios derive from the capital structure, not vice versa.

Along these lines, the AG also asserts that "the capital structure enters into the formula rate template only in the form of the capital structure ratios." (AG Init. Br. 16 (internal quotations omitted).) Not only is this another instance of the unavoidable distinction between capital structure and ratios, but it is demonstrably wrong: actual capital structure *does* enter the formula rate template, and the listed ratios plainly trace back to actual dollar balances. To see this, turn to page 5 of Ameren Exhibit 2.5. The ROE collar computation lists several ratios at

[2] To this end, the AG quotes an AIC witness's so-called "admi[ssion]" that capital structure means the "mix of debt or equity capital." (*See* AG Init. Br. 13 (*quoting* Tr. 252).) The apparent implication is that this testimony supports the AG. It does not. Capital structure refers to *actual capital* (as the witness said), not abstract ratios (as the AG proposes).

lines 2 through 5. But these ratios did not come from nothing: the listed source is Schedule D-1. And turning eight pages forward to Schedule D-1, the ratios (lines 10-13) are expressly derived from actual balances (lines 5-9). The point? Contrary to the AG's assertions, the actual capital structure does appear in the template as capital balances; the ratios are only derivative.

These templates confirm that, at bottom, capital structure means capital. Subsection (c)(2)'s requirement to use "actual year-end capital structure" forecloses the AG's proposal.

Subsection (c)(5)'s "consistent with" provision also rules out the AG's proposal.

The EIMA also requires that ROE be calculated "consistent with this Section." 220 ILCS 5/16-108.5(c)(5). Among other things, this language incorporates Section 16-108.5's overarching requirements to perform computations in this case using "final historical data" in general and "year-end rate base" in particular. 220 ILCS 5/16-108.5(d)(1).

The AG has not even attempted to account for this statutory requirement in its initial brief. On the contrary, the AG makes a concession that should be sufficient to settle this issue: in the AG's words, "Section 16-108.5 requires that 'year-end rate base' be used in determining . . . the utility's capital structure." (AG Init. Br. 11.) This is *exactly* what AIC has been arguing, and it rules out the AG's proposal to use average rate base.

The requirements of the EIMA control and AIC has already shown it requires that year-end rate base be used in determining the collar. The AG has not offered a plausible explanation to the contrary.

The AG's other arguments are irrelevant given the statutory requirements.

The AG offers two other points, but they are either incorrect or irrelevant.

The Docket 12-0001 Order does not control this issue.

First, the AG premises a great deal of its argument on the notion that the Commission's decision to use average rate base in Docket 12-0001 somehow continues to control this issue.

According to the AG, the amendatory act that essentially reversed the 12-0001 Order "did not address the treatment of rate base in the ROE collar computation." (AG Init. Br. 15.) Thus, says the AG, AIC was "not authorized" to "use year-end rate base rather than average rate base" to calculate the ROE collar. (*Id*.) The AG ignores the fact that the ROE-collar computation in Docket 12-0001 has been overridden not once, but twice: first by law, then by a later order.

First, the legislature reversed the Commission's prior attempt to read "final historical data" as allowing the use of average data, and specifically its use of average rate base and capital structure instead of year-end rate base and capital structure. *See* Ill. Pub. Act 098-0015 (2013) (codified at 220 ILCS 5/16-108.5). Subsection (k)(1) specifically states that the amendatory revisions "preempt[] and supersede[] any final Commission orders entered in Docket No[.] . . . 12-0001." Although (as noted) the AG does not acknowledge it, these year-end requirements are incorporated by the ROE-collar's "consistent with this Section" provision. Thus, the General Assembly has already ruled out the AG's proposal to substitute average for year-end rate base.

Then, in Docket 13-0385, AIC submitted revised tariffs pursuant to Section 16-108.5(k) and the Commission approved an ROE-collar computation that is in substance identical to the computation in Schedule FR A-3, and which was based on year-end rate base. (*See* Ameren Ex. 2.5, line 1; Ameren Ex. 2.1) at 6.) No party sought rehearing or an appeal from the Commission's Order in that case. Indeed, although the AG acknowledges that "Ameren changed its tariff on June 5, 2013" (AG Init. Br. 12) it fails to mention that "June 5, 2013" was the date that the Commission *approved* these tariffs. *See In re Ameren Ill. Co.*, Docket 13-0385, Order 3-4 (June 5, 2013). AIC did not just "change" its tariffs, and it is factually incorrect to say that AIC's tariffs are not authorized.

This Docket 13-0385 Order is on-point but the AG simply ignores it. That alone is grounds for rejecting its argument. But even had the AG attempted to challenge the Docket 13-0385 Order, the collateral-attack rule would stand in the way. "The issues raised by [the AG] were already before the Commission . . . . To allow this type of back-door maneuvering would vitiate the protection that the courts found to be necessary to bring assurance of stability and finality in Commission Orders." *Citizens for a Better Env't v. Ill. Wood Energy Partners*, Docket 94-0363, 1995 Ill. PUC LEXIS 247, at *15-16 (Apr. 12, 1995); *see also, e.g.*, *Peoples Gas Light & Coke Co. v. Buckles*, 24 Ill. 2d 520, 528 (1962) ("[O]rders of the Commerce Commission . . . are not subject to collateral attack" and thus where certain parties "did not . . . contest the order of the Commission by direct appeal . . . [t]hey cannot now collaterally attack the order."); *In re Ill. Power Co.*, Docket 01-0701, 2004 Ill. PUC LEXIS 101, at *18 (Feb. 19, 2004) ("[T]he outcome that IP seeks essentially amounts to a collateral attack on [an earlier order]. The proper means by which to correct perceived errors in Commission orders is through the rehearing and appeal processes. Such corrections should not be sought in other dockets.").

In short, the AG is wrong to say that AIC's tariffs are unauthorized, and it is too late to challenge their approval. However the Commission treated rate base in Docket 12-0001, it is simply irrelevant now. The question is what the statute requires, and the contents of an order predating the latest version of the statute are simply irrelevant as a matter of law to that question.

The AG's opinion regarding the most "accurate" means of determining rate base is irrelevant.

Finally, the AG recaps at length its witness's opinion that average rate base more "correctly represents" and "accurately reflect[s]" AIC's actual investment. (*See* AG Init. Br. 13-15.)

Whether this opinion merits consideration is beside the point. The EIMA does not tell the Commission to determine the ROE collar using the most "correct" or "accurate" measure of rate base. It tells the Commission to calculate the ROE collar using AIC's "actual year-end capital structure," 220 ILCS 5/16-108.5(c)(2), "consistent with" the statute's overriding requirements to use "final historical data" and "year-end rate base." 220 ILCS 5/16-108.5(c)(5) & (d)(1).

Perhaps reasonable minds could differ over whether average data presents the "correct" depiction of rate base in a law designed to incentivize capital investment. But one cannot reasonably conclude that "actual year-end capital structure," "final historical data," or "year-end rate base" permit the use of average data. In summary, the AG's proposal to modify the computation of the ROE collar contradicts the express requirements of the EIMA. It must be rejected.

2. Reconciliation Interest Calculation

The AG and CUB's proposed reconciliation interest adjustment distills to the question of what amount to multiply by the interest rate in the EIMA's annual reconciliation "with interest." 220 ILCS 5/16-108.5(c)(6). The EIMA requires that this amount be the over-collection or under-collection indicated by the "reconciliation of the revenue requirement that was in effect for the prior rate year . . . with the actual revenue requirement for the prior rate year." 220 ILCS 5/16-108.5(d)(1). The AG and CUB propose instead that this amount be something different: the over-collection or under-collection net of taxes. (AG Init. Br. 17; CUB Init. Br. 9-10.) This proposal violates Section 16-108.5 and should be rejected. Staff agrees. (Staff Init. Br. 10-11.)

CUB and the AG read additional words into the reconciliation provisions of the EIMA.

As AIC explained in its Initial Brief (pp. 15-18), any over-collection or under-collection in the formula rates for a given year is either "reflected as a credit against" or "recovered as an additional charge to," with interest, the charges for the applicable rate year. 220 ILCS 5/161-08.5(d)(1). The amount of any over-collection or under-collection is the amount indicated by a reconciliation of the revenue requirement that was in effect for the prior rate year with the actual revenue requirement for the prior rate year. *Id.* It is this amount—the amount indicated by the reconciliation, to which interest is applied. (Ameren Exs. 2.4, p. 6; 2.5, p. 6.) The statute could not be more clear on this, and the formula is simple:

Interest = Interest rate X (Actual revenue requirement for the prior rate year - Revenue requirement in effect for the prior rate year)

AG and CUB, however, propose to add terms to the equation:

Interest = Interest rate X ((Actual revenue for the prior rate year – Revenue requirement in effect for the prior rate year) – (tax rate X (Actual revenue requirement for the prior rate year – Revenue requirement in effect for the prior rate year)))

The terms the AG and CUB propose to add, however, are not found in the statute. The statute does not say over- or under-collection "net of taxes," or reconciliation of the revenue requirement that was in effect for the prior rate year with the actual revenue requirement for the prior rate year "net of taxes." The legislature could have added "net of taxes" language. As AIC pointed out in its Initial Brief, elsewhere in the EIMA, the legislature did just that. (AIC Init. Br. 18.) But it did not add a "net of taxes" requirement to Section 16-108.5(d)(1), and the AG and CUB cannot read additional words in that are not there. *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 154-55 (1997).

The AG's position rests on the assertion the Act requires a consideration of "cash flow" when determining the amount to which reconciliation interest should be applied. The AG argues, "While the statute could have directed the Commission to apply interest to the full reconciliation balance, it only authorizes interest on the 'over-collection or under-collection.' This requires the Commission to determine the actual over- or under-collection, taking into consideration the cash flow effect of the formula rate process." (AG Init. Br. 18.) But nowhere does the statute require "consideration [of] the cash flow." And, tellingly, the AG provides no citation to the record or any legal authority to support its proposition.

And even if cash flow was considered, as AIC explained in its Initial Brief, there is not source or use of cash from the recording of a journal entry for deferred income taxes on the reconciliation balance is not a source of cash. (AIC Init. Br. 20-22.) Cash is tangible. It does not mysteriously appear from an accounting entry, but rather comes from an actual source. The accounting entry recognizes the fact that there is a temporary timing difference, as the AG acknowledges, (*id*. 22), due to the reconciliation over-collection or under-collection not being refunded to, or collected from, ratepayers in the reconciliation year. (AIC Ex. 2.2, pp. 10-13.) Hence, the AG analysis fails even under a "cash flow" analysis.

Nor does the statute distinguish "full reconciliation balance" from "over-collection or under-collection." AIC agrees that the statute authorizes interest on the "over-collection or under-collection." But the "over-collection or under-collection," being the amount indicated by the reconciliation, is the "full reconciliation balance." The "over-collection or under-collection" is not some different amount from the amount indicated by the reconciliation. CUB's Initial Brief confirms this when it states, "The reconciliation balance is the *total difference* between the revenue requirement actually incurred in 2012 and the revenue requirement that the Commission determined in ICC Docket 12-0293[3]. *That difference* is collected from or credited to customers, with interest." (CUB Init. Br. 9 (emphasis added).)

The AG argues that "The Commission should apply interest to the utility's actual cash expense to conform to the legislative intent that the reconciliation reflect 'the actual cost information for the applicable calendar year.'" (AG Init. Br. 18.) But that argument misses the

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[3] The reconciliation does not compare to the revenue requirement set in Docket 12-0293, as that revenue requirement is reflected in rates in 2013. The reconciliation in this case compares to a revenue requirement set by Dockets 09-0306 (cons), for part if 2012, and then Docket 12-0001

point. The reconciliation does reflect actual costs. But the issue is what balance or amount to apply interest to. That amount is specified in Section 16-108.5(d)(1), and does not include an adjustment for "actual cash expense" related to taxes. And again, even if "actual cash expense" related to taxes is considered, the result is the same, as changes in income taxes payable occur when the reconciliation balances are refunded to or collected from ratepayers in future periods, not when an accounting entry is recorded. The AG also claims that the recognition of the effect of deferred taxes is a well-established regulatory practice. (AG Init. Br. 20.) That may be. But under traditional ratemaking, an accounting entry never has and never will generate cash in hand. Deferred taxes are recorded to recognize temporary timing differences. And whether recognition of deferred taxes is a "well established" practice is irrelevant. Section 16-108.5 does not provide for reconciliation interest to be calculated on a reconciliation amount net of taxes.

CUB and the AG's proposal seems designed to mitigate a "substantial increase in the interest rate to equal the weighted average cost of capital."

As AIC explained in its Initial Brief (p. 19), under the AG and CUB's proposal, interest on reconciliation over- or under-collections would effectively be something less than the weighted average cost of capital required by Section 16-108.5(d)(1). The AG and CUB's briefs suggest that their intended goal is to mitigate the effect of the higher interest rate required by the amendment to Section 16-108.5.

The AG notes that the weighted average cost of capital "is a substantially higher rate than the short-term interest rate the Commission approved in the initial formula rate dockets." (AG Init. Br. 17.) The AG then refers to "the substantial increase in the interest rate to equal the weighted average cost of capital (8.163% for AIC) now required under P.A. 98-0015," as a reason why "accounting for the tax effect of the delay associated with the reconciliation has become significant." (AG Init. Br. 19.) Similarly, CUB states "This issue is particularly important as a result of the amendments to subsections (c) and (d) of Section 16-108.5 of the PUA, which, as noted above, now requires that the interest on the reconciliation balance must reflect ComEd's [sic] actual WACC . . . . Previously, the Commission had ordered that the short-term debt rate should be the interest rate on reconciliation balances." (CUB Init. Br. 11.) Likewise, CUB states, "to be clear, this is an adjustment not to the reconciliation balance itself, but the portion of the balance of which interest is applied." (CUB Init. Br. 13.) Thus, the AG and CUB proposal is not designed to lower the reconciliation amount, as deferred taxes are restored, or added back, on the AG's proposed Sch. FR A-4 at line 32a (AG Init. Br. Ex. 2), but rather to lower the amount of interest to a level below the weighted average cost of capital. Regardless of how the AG and CUB may feel about an interest rate set at the weighted average cost of capital, however, that is what the law requires. Their proposal produced a result that is contrary to the EIMA by resulting in an effective interest rate lower that the weighted average cost of capital.

The AG and CUB's proposal imposes a permanent adjustment for a temporary difference.

Both the AG and CUB acknowledge that the timing of over- or under-collections creates a temporary tax timing difference. (AG Init. Br. 22; CUB Init. Br. 12.) But as AIC explained in its Initial Brief, the AG and CUB fail to address the reversal of this temporary timing difference. Deferred taxes on the reconciliation balance represent a temporary timing difference that reverses when the under-recovered reconciliation amounts are recovered in rates. (Ameren Ex. 2.2, p. 12; AG Ex. 6.0, p. 47 (Tr. 263).) But the AG and CUB propose a one-time Accumulated Deferred Income Tax deduction for which there is no opportunity to normalize, or amortize. (Ameren Ex. 2.2, p. 13.) In short, the AG proposes to make a temporary timing difference permanent.

The AG and CUB's arguments also suggest a circular result. CUB acknowledges that the deferred taxes associated with formula rate reconciliation balances are "dynamic." (CUB Init. Br. 13.) CUB and the AG's proposal changes the amount of interest calculated, which in turn would have its own tax effect. In the over-collection situation presented by Docket 13-0301, CUB and the AG's proposal would reduce the interest amount credited to ratepayers. (AG Init. Br. 19.) Because interest expense is deductible, this reduction in interest expense would mean higher taxes (AG Ex. 6.0, p. 47 (excerpt of Mr. Stafford's cross-examination testimony))—and so the AG and CUB's after-tax reconciliation balance would be too high. Lowering the after-tax balance would lower the interest credited to ratepayers further, in turn increasing taxes and so on. (Ameren Ex. 2.2, p. 14.) In an under-collection situation, CUB and the AG's proposal would reduce the interest income amount received by the utility. (Ameren Ex. 2.2, p. 12.) This would decrease the utility's taxes, so the AG and CUB's after-tax reconciliation balance would be too low. Increasing the after-tax balance would reduce interest income further, in turn decreasing taxes and so on. This dynamic aspect of the effect of the AG's proposal is also why, as AIC explained in its Initial Brief, it is unclear where the cash to pay income taxes on interest income on an under-recovered balance, or cash to pay income tax expense on over-recovered balances will come from, under the AG's proposal. (Ameren Ex. 2.2, p. 13.)

Not only does the AG and CUB's proposal ignore the statute, which sets a specific (and static) amount on which interest is to be calculated, it ignores both the temporary nature and dynamic effect of its proposed changes.

The AG admits that its proposal adversely affects ratepayers.

AIC explained in its Initial Brief that the AG's proposal is a detriment to ratepayers and the utility. (AIC Init. Br. 19.) In Docket 13-0301, the proceeding to review cost inputs to the formula for rates effective in 2014, there is an over-collection to be credited, with interest, to ratepayers. The AG admits that its proposal adversely impacts ratepayers in this over-collection scenario: "Ameren's pending annual formula rate docket, where the reconciliation results in an over-collection necessitating a credit to consumers, accounting for the timing of tax payments will reduce the credit to consumers." (*Id.*)

The AG and CUB's proposal is contrary to Section 16-108.5, ignores the temporary nature and dynamic effect on taxes it creates, and is adverse to both ratepayers and the utility. The Commission should therefore reject it.

3. Depreciation Expense

All parties are in agreement that AIC's updated depreciation study should be used to determine its filing-year depreciation expense, and that this proposal requires a change to AIC's Schedule FR C-2. (AIC Init. Br. 22-23; Staff Init. Br. 11-12; CUB Init. Br. 14; AG Init. Br. 25.) AIC, Staff and CUB agree that the results of the updated depreciation study are appropriately incorporated into FR C-2 via the addition of two lines: 8a and 8b. (AIC Init. Br. 22-23; Staff Init. Br. 11-12; CUB Init. Br. 14.) However, the AG argues that this method is insufficiently transparent, and the AG's Initial Brief proposes, for the first time, additional modifications to Schedule FR C-2 as well as Workpaper 18. (*See* AG Init. Br. 30-31.)

When a substantive proposal is made for the first time in briefing, opposing parties are deprived of an opportunity to review and contest the proposal, and the Commission is prevented from making findings based on record evidence. The AG's additional modifications to Schedule FR C-2 and Workpaper 18 were proposed for the first time in the AG's Initial Brief. No witness testifies that these changes are appropriate—indeed, the AG's Initial Brief section titled "People's Recommendations" does not include a single citation to the record. (*See* AG Init. Br. 30-31.) Therefore the AG's recommendations can be rejected (however, as discussed below, AIC will seek to address the AG's concerns on Workpaper 18).

The Commission must base its conclusions exclusively on the "evidence presented in the case, with an opportunity to all parties to know of the evidence to be submitted or considered, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal, and *nothing can be treated as evidence which is not introduced as such*." *Chicago & E.I. Ry. Co. v. Ill. Comm. Comm'n*, 341 Ill. 277, 285 (1930) (emphasis added); *see also* 220 ILCS 5/10-103 ("any finding, decision or order made by the Commission shall be based exclusively on the record for decision in the case"). Consideration of proposals set forth for the first time in briefing violates fundamental fairness and abridges other parties' due process rights. *Ill. Comm. Comm'n*, Docket 94-0066, Order, 1995 Ill. PUC LEXIS 176, *266-68 (Feb. 23, 1995) (giving no weight to proposals raised for the first time in brief, reasoning that the proposals had not been tested on cross-examination and no witnesses had an opportunity to respond).

Because the AG's recommendations were not presented until its Initial Brief, all other parties have been deprived an opportunity to cross-examine or submit evidence concerning the proposed changes to Schedule FR C-2 and Workpaper 18. Moreover, as indicated, the proposals were not offered in the testimony of any witness. As a result, the consequences of the proposed changes, particularly to FR C-2, have not been fully evaluated. Therefore, the AG's proposal does not constitute record evidence upon which the Commission may properly rely.

In particular, AIC does not accept the AG's additional modifications to Schedule FR C-2. These recommendations are unsupported, improperly proposed, and will introduce unnecessary additional complexity to the formula rate. They illustrate the problematic nature of recommendations that are not subject to response or cross-examination—the AG's recommendations concerning Schedule FR C-2 appear to have been insufficiently developed or vetted. For example, the AG's changes refer to a "Study-based Change to Depreciation Rate" without discussion of changes to depreciation rates not based on a study. The AG's changes are also mathematically incorrect. The AG seeks to insert a new Line 1a, which will represent a percent value for the adjustment to forecasted depreciation on plant. (AG Init. Br. 30.) The AG's Initial Brief continues: "Line 5 should be modified to include Line 1a in its summation [of Line 1 through Line 4]." (*Id.*) Lines 1, 2, 3, and 4 each represents a numerical dollar value. (*See* AG Init. Br. Ex. 3.) Thus, the AG's proposal, on its face, requires summation of a percent value (e.g. 5%) with numerical dollar values (e.g. $5000). This is improper from a mathematical perspective, and undermines the AG's contention that the proposal would increase the transparency of Schedule FR C-2. If AIC had an opportunity to respond to the AG's proposal in testimony, or to conduct cross-examination on the subject, this issue might have been resolved. *Ill. Comm. Comm'n*, Docket 94-0066, Order, 1995 Ill. PUC LEXIS 176, *266-68. However, as it stands, the AG's proposal suffers from a fundamental flaw, and cannot be adopted.

However, AIC acknowledges the AG's concerns regarding the transparency of Workpaper 18 (AG Ex. 6.0, p. 18 (AIC witness Mr. Stafford's cross-examination testimony)), and will endeavor to incorporate the AG's recommendations concerning Workpaper 18 into its compliance filing version of that Workpaper.

4. Separate Cash Working Capital Calculation for Filing and Reconciliation Year

Staff continues to recommend that AIC perform two separate calculations of its cash working capital: one for the filing year, and a second for the reconciliation year. (Staff Init. Br. 12.) CUB has chosen to support Staff's position in its Initial Brief, although CUB did not submit any testimony on the issue. (CUB Init. Br. 14-17.) Staff's proposal should be rejected because it adds administrative burden to the formula rate update and reconciliation process, and to the extent the two calculations produce meaningful differences, would tend to increase reconciliation balances.

At the outset, it appears necessary to clarify that all parties are in agreement that the cash working capital calculation in the reconciliation year should be based on actual results of AIC's operations in the reconciliation year (in this case, 2012), and should not consider the impact of plant additions projected for the filing year (in this case, 2013). (Staff Init. Br. 13; ICC Staff Ex. 7.0, p. 10.)

The disagreement among the parties concerns the cash working capital calculation applicable to the filing year. AIC proposes to use a single calculation for both the reconciliation year and the filing year: a calculation of the actual cash working capital available to AIC over the reconciliation year. (AIC Init. Br. 24.) This approach was approved by the Commission in Docket 12-0321. *Commonwealth Edison Co.*, Docket 12-0321, Order App. A-B (Dec. 19, 2012). Staff and CUB, on the other hand, argue that it is necessary to perform a second cash working capital calculation for the filing year, to account for the impact of projected plant additions in the filing year (in this case, 2013). (Staff Init. Br. 13.) Staff argues that this second calculation is appropriate to ensure that the reconciliation and filing year cash working capital calculations "are representative of the costs and revenues associated with each revenue requirement." (*Id.*)

However, Staff's proposal is *not* representative of the costs and revenues associated with a complete cash working capital calculation because Staff's filing year calculation includes 2013 plant additions in isolation. Staff's proposal would calculate cash working capital in the filing year by adding the projected plant additions for 2013 to AIC's actual cash working capital data from 2012. (ICC Staff Ex. 7.0, p. 2.) Adding projected plant additions in isolation from other changes, such as changes to payroll or other operations and maintenance expenses, has the effect of reducing the cash working capital amount, primarily due to changes in interest expense. (Staff Init. Br., App. A, App. 3.) When actual cash working capital data for 2013 becomes available, it will include many more elements than just projected plant additions. These other elements can increase cash working capital. (*See, e.g.* Ameren Ex. 2.4, p. 19.)[4] By ignoring other elements of revenue requirement that impact cash working capital and focusing solely on projected plant additions, Staff artificially distorts the cash working capital value for the filing year, driving the cash working capital *downward* by $321,000.[5] (Staff Init. Br. App. A, App. 3.)

Under Staff's proposal, this lower value will be carried forward into a subsequent reconciliation proceeding (in this case 2014), in which it will be compared against the actual cash working capital figures for that year (Staff Init. Br. 16), which will include additional elements such as payroll (discussed above) and other operations and maintenance expense that may produce a higher cash working capital value. (*See, e.g.* Ameren Ex. 2.4, p. 19.) In other words, Staff's lower cash working capital value will be reconciled against a higher actual figure. As Staff witness Mr. Mike Ostrander conceded, any difference in the cash working capital values between the reconciliation year and the filing year creates a reconciliation balance, and the greater the difference between the cash working capital calculations, the greater the reconciliation balance. (Ameren Ex. 4.2, pp. 7-8.) The greater the reconciliation balance, the larger the interest amount eventually borne by ratepayers or the utility on the reconciliation. AIC's recommendation, on the other hand, utilizes actual data from the most recent year available, including all of the additional elements that Staff does not include when adjusting for

[4] For example, there could be increases in payroll expense to fulfill hiring requirements under EIMA. 220 ILCS 5/108.5(b). As illustrated on App 3 (*see, e.g*. Staff Init. Br. App. A, App. 3), Line 1 Revenues have a column (D) Revenue Lag of 49.75 and Line 12 Payroll has a column (D) Expense (Lead) of 11.39 days. If the revenue requirement in 2013 increased by $1 million due to an increase in Payroll to fulfill the EIMA requirements, Lines 1 and 12 would both increase by $1 million, resulting in an increase in cash working capital of approximately $105,000, which more than offsets Staff's proposed cash working capital change in Staff's Initial Brief in Docket No. 13-0301, for just one additional change in revenue requirement.

[5] Staff's difference of $321,000 is an apples-to-oranges comparison of the Company's cash working capital calculation for the Reconciliation Year, using Company revenue requirement, with Staff's cash working capital calculation for the Filing Year, using Staff's revenue requirement. In Staff's Initial Brief in Docket No. 13-0301, the cash working capital for the Reconciliation Year and the Filing Year was $10.190 million and $10.088 million, respectively, for a difference in cash working capital of $0.102 million or $102,000.

only plant additions. (*See, e.g.* Ameren Ex. 2.4, p. 19.) As a result, AIC's calculation better approximates the actual costs and revenues that are associated with the reconciliation year revenue requirement, and since it represents a complete calculation for all elements of cash working capital in 2012, it provides a valid estimate of a complete cash working capital calculation for a future reconciliation.

In addition, as Staff recognized, "increases in the rate of plant additions will increase the impact" of its proposal. (Staff Init. Br. 17.) If plant additions grow, as Staff assumes they will, the effect of "projected plant additions" on the filing year cash working capital will cause the total cash working capital value calculated under Staff's proposal to diverge even further from the reconciliation year values. Thus, adoption of Staff's calculation will virtually ensure that the impacts to the reconciliation balance in each future year is greater than it would be under AIC's calculation.

Staff devotes a great deal of discussion to AIC's "incorrect comparison" of the two cash working capital values calculated by Staff. (Staff Init. Br. 15.) However, Staff witness Mr. Ostrander made the same comparison between these values that Staff now argues in brief was improper. (ICC Staff Ex. 7.0. p. 6.[6]) It is not clear why Staff now believes the comparison made by its own witness is not proper. Nevertheless, the instant case is the first case in which AIC has a reconciliation revenue requirement, and it is the first case in which Staff has proposed two cash

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[6] Mr. Ostrander's testimony states as follows:

Q. Using the above proposed changes, what was the difference in Staff's two separate calculations in Docket No. 13-0301?

A. In Staff's Initial Brief in Docket No. 13-0301, the CWC for the Reconciliation Year and the Filing Year was \$10.190 million and \$10.088 million, respectively, for a difference in CWC of \$0.102 million or \$102,000.

Q. Some could opine that such a difference would produce a small change in the revenue requirement. What is your response?

A. While the current calculation difference makes up approximately 0.005% of the filing year rate base, the difference may not always be a small amount. Increased plant additions will increase the impact on the filing year CWC.

working capital calculations. (ICC Staff Ex. 7.0, p. 3.) Thus, both AIC and Staff witness Mr. Ostrander compared the only two values available; this is a reasonable approach, and Staff's criticism of it is misplaced.

Staff's own witness reached the same conclusion regarding the *de minimus* current impact on the revenue requirement. (ICC Staff Ex. 7.0, p. 6 (Mr. Ostrander noting the "difference makes up approximately 0.005% of the filing year rate base.") Nevertheless, Staff argues that its proposal "should be used regardless of its effect on rate base." (Staff Init. Br. 17.) However, as AIC argued in its Initial Brief, any theoretical benefit from performing the two calculations does not outweigh the additional burden placed on AIC, and others, by requiring the calculation be performed twice, and review of any corrections be performed twice as well. (AIC Init. Br. 25.)

In contrast, AIC's proposal is efficient, comports with Commission precedent, and produces a filing year cash working capital value based on actual reconciliation year values, and will likely result in a smaller overall reconciliation balance in future reconciliation years than Staff's proposal. This is a just and reasonable outcome, and should be approved by the Commission.

5. Income Tax Expense Lead for Cash Working Capital Calculation

AIC and Staff continue to agree that AIC's cash working capital associated with income tax expense should be calculated using statutory tax rates and payment dates, and combining current income taxes with deferred taxes. (AIC Init. Br. 25; Staff Init. Br. 17.) The AG and CUB, on the other hand, would have the Commission set the revenue lag and expense lead days for income taxes at zero, based on its assertion that AIC did not actually pay income taxes in 2012. (AG Init. Br. Ex. 4, p. 5; CUB Init. Br. 17.) In support of its proposal, the AG refers to the arguments presented in its briefs in Docket 13-0301. (AG Init. Br. 31-32; *see also* AG Init.

Br. Ex. 4.) CUB relies on AG witnesses' testimony in Docket 13-0301 to make arguments identical to those proffered by the AG. (CUB Init. Br. 17-18.)

As explained in AIC's Initial Brief, and more fully in AIC's Initial and Reply Briefs in Docket 13-0301 (Docket 13-0301: AIC Init. Br. 8-9; AIC Reply Br. 5-6), the AG and CUB proposal is contrary to longstanding Commission practice, and has been consistently rejected by the Commission in favor of the approach favored by AIC and Staff. (AIC Init. Br. 25-26; Staff Init. Br. 17.) For the reasons set forth in AIC's Initial and Reply Briefs in Docket 13-0301, the adjustment proposed by AG and CUB should once again be rejected.

III. PROCESS FOR IMPLEMENTATION OF FORMULA RATE TEMPLATE CHANGES IN DOCKET NO. 13-0301, IF APPROVED IN DOCKET NOS. 13-0501/13-0517

In its Initial Brief, AIC recommended that it be directed to submit a compliance filing, consisting of the formula rate tariffs, supporting schedule and appendices, that reflects the formula template changes approved in the interim order, within five business days of the order. AIC made the recommendation because AIC has determined that five business days is needed. AIC also committed to provide parties with a working Excel version of the formula rate tariffs, supporting schedule and appendices, reflecting the changes approved in the interim order. The AG recommends that AIC submit its compliance filings to parties for review within three business days, with a further three business day period for parties review and possibly file motions. AIC recommends that the AG's proposal be rejected. AIC has committed to provide the Excel version of the formula rate tariffs, supporting schedule and appendices for review within the five business day period. Allowing the opportunity for motions introduces unnecessary procedural complexity and would only serve to delay the finalization of any changes.

Dated: October 24, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on October 24, 2013, I caused a copy of the foregoing *Reply Brief of Ameren Illinois Company* to be served by electronic mail to the individuals on the Commission's Service List for Docket Nos. 13-0501/13-0517 (cons.).

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